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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,004	06/06/2005	Christy Cummins	16497.124	8672
57360	7590	01/30/2008	EXAMINER	
WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			WOO, JULIAN W	
		ART UNIT	PAPER NUMBER	
		3773		
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		01/30/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/517,004	CUMMINS ET AL.
	<b>Examiner</b>	Art Unit Julian W. Woo 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2007.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14-21 and 25-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 27-29 is/are allowed.  
 6) Claim(s) 14-21, 25 and 26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                         |                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/11, 30/2007</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                                                         | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14-21, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanson et al. (6,113,612). Swanson et al. disclose, at least in figures 1 and 7-10 and in col. 7, line 1 to col. 8, line 20; a clip or a device including a ring (e.g., 10) having a resiliently expandable circumference and a plurality of barbed prongs (e.g., 42) extending at least approximately in the same direction from one edge of the ring, where the prongs converge (i.e., taper) slightly towards the center of the ring (near 54a), where the ring is sinuous (along 40), where the ring comprises a plurality of elongated segments (comprising segments 50a and 52a or 60a and 62a) each with a longitudinal slit (between segments), the segments being disposed side by side around the ring with their longitudinal axes substantially parallel and being joined each to the next by a relatively narrow waist (at 54a or 54b); where the device includes an elongated body (230) having a front end for insertion through a hole in a blood vessel, a clip expander (110) positioned on the body rearwardly of the front end, a clip (10) having a ring disposed around the expander and prongs (24 or 42) projecting towards the front end of the body, where the clip expander is actuatable to resiliently expand the circumference of the ring, the clip being movable forwardly in its expanded state so that the prongs pierce

the tissue around the hole, the clip expander thereafter being actuatable to release the clip so that the body and clip expander can be withdrawn from the ring, where the clip expander comprises an inflatable enclosure (110) surrounding the body, the enclosure being actuatable by introducing fluid under pressure into the enclosure (i.e., inflated) and actuatable to release the clip by venting the fluid (i.e., deflated), where the fluid is introduced into the enclosure via a longitudinal bore in the body, wherein when inflated, the enclosure has a shoulder behind the ring (see fig. 10, where element 110 has proximal and distal shoulders upon inflation), where the body has a longitudinal bore to slidably accommodate a guide wire (210), and where the body has a longitudinal bore to serve as a blood return channel. Note: The introductory statement of intended use ("for closing a puncture hole in a blood vessel") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over the device of Swanson et al., which is capable of being used as claimed if one desires to do so.

***Allowable Subject Matter***

3. Claims 27-29 are allowed.
4. The following is an examiner's statement of reasons for allowance: None of the prior art of record, alone or in combination, discloses a device including, inter alia, an elongated body, a clip expander, a clip having a ring and prongs, where the clip expander is actuatable to resiliently expand the circumference of the ring and actuatable to release the clip, where the clip expander comprises a sleeve surrounding the body

which has one end fixed relative to the body, a section of the sleeve intermediate its ends being slit longitudinally to form a plurality of splines which can be forced mutually outwardly by sliding the other end of the sleeve along the body towards the fixed end of the sleeve, and where the clip is mounted on the splined section.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Amendment***

5. The claim objection is hereby withdrawn.

Applicant's arguments filed on November 13, 2007 and regarding the rejection based on the reference of Swanson et al. have been fully considered but they are not persuasive. The Applicant has asserted that Swanson et al. "neither teaches nor suggest 'closing a puncture hole in a blood vessel.'" On the contrary, the Examiner posits that Swanson et al. indeed discloses the invention as claimed, and that the preambular language, as recited above, is directed to the manner in which a claimed apparatus is intended to be employed. The introductory statement of intended use does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations (*Ex parte Masham*, 2 USPQ2d 1647 (1987)). Moreover, the preambular language has not been given patentable weight, because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained

description of the structure not depending for completeness the introductory clause (*Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)).

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

January 28, 2008